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PRICE *v.* COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 349.]

**1. Intoxicating Liquors (§ 131\*)—Justice of the Peace Not Criminally Liable for Requesting Others to Sample Liquor Seized, to Assist Him in Determining Whether Law Violated.**—Where a justice of the peace under proper writs has caused liquors to be seized, if acting in good faith, he is not liable criminally for requesting third persons present in his court room to sample the liquor, to ascertain whether it is ardent spirits, to assist him in determining whether there had been a violation of the liquor law.

**2. Intoxicating Liquors (§ 239 (1)\*)—Instruction Submitting Purpose in Asking Others to Sample Seized Liquor Not Error.**—Notwithstanding Code 1919, § 4621, provides the method of analyzing liquors, in a prosecution of a justice of the peace for giving away ardent spirits, an instruction that, if the defendant's sole object in asking persons in his office to taste was to enable him to ascertain whether it was ardent spirits, and to determine whether there was a grand jury case, the jury should acquit, was not error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 601.]

**3. Criminal Law (§ 815 (5)\*)—Instructions Predicated on Partial View of Evidence Error.**—In a prosecution of a justice of the peace for giving away ardent spirits, instructions that ignored testimony that accused acted in his official capacity and in good faith held erroneous.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 723.]

**4. Criminal Law (§ 762 (5)\*)—Instruction Held to Invade Province of Jury.**—In a prosecution of a justice of the peace for giving away intoxicating liquor, an instruction that set out that "it appeared to be a case of unintentional violation" of the law was an invasion of the province of the jury.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 730.]

Error to Circuit Court, Brunswick County.

Thomas B. Price was convicted of violating the liquor law, and he assigns error. Reversed, and new trial awarded.

*E. P. Buford* and *Marvin Smitley*, both of Lawrenceville, for plaintiff in error.

*John R. Saunders, Atty. Gen.,* and *J. D. Hank, Jr., Asst. Atty. Gen.,* for the Commonwealth.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.